

ADVISORY OPINION 1999-014

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

November 1, 1999

Mr. John M. Riley
8609 Whipps Mill Road
Louisville, Kentucky 40222

Dear Mr. Riley:

This is in response to your request for an advisory opinion regarding your support of Gatewood Galbraith for Governor. Your letter references several statutory and constitutional provisions, with emphasis, and requests responses to the following questions.

- (1) Are corporate or private contributions (Monetary or InKind) to the campaign of Gatewood Galbraith or any other candidate allowed after October 4, 1999?**

KRS 121A.030 prohibits a slate of candidates for Governor and Lieutenant Governor from accepting contributions during the twenty-eight (28) days immediately preceding an election.¹ Therefore, the Galbraith/Lyons slate may not accept a contribution, either monetary or in-kind, from a third party after October 4, 1999. KRS 121.150(22) prohibits a slate of candidates from accepting a contribution from a corporation.

- (2) Are the Courier Journal and the Lexington Herald Leader registered and operating as corporations with the Secretary of States' Office?**

KRS 121.120(1)(f) and 121.135(1) permit the Registry to render opinions concerning the application of KRS Chapters 121 and 121A. However, information

¹ However, under Gable v. Patton, 142 F.3d 940 (6th Cir. 1997), the members of a slate of candidates that does not elect to participate in public financing may contribute their personal funds to the campaign during the twenty-eight (28) day window.

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regarding the corporate status of entities may be obtained from the office of the Secretary of State.

(3) Are they exempt from the current election laws and by what authority if so?

KRS 121.135(1) provides that an advisory opinion request must address the application of KRS Chapters 121 or 121A to a specific transaction or activity by the requesting person. The Registry cannot consider requests for a general question of interpretation or concerning the activities of third parties. 32 KAR 2:060 § 1(2). The applicability of Kentucky campaign finance statutes to media entities is specific to the particular statute in question and facts presented.

You also ask the following questions regarding your activities in support of the election of Gatewood Galbraith.

(4) Is the cost of my printing and distributing such materials a violation of the current election law? If so, under what authority, as it relates to Section 1 and Section 8 of the Kentucky Constitution, does this constitute a violation [sic] the law?

The cost of printing and distributing materials in excess of \$1,000, which expressly advocate your support of Gatewood Galbraith, does not violate Kentucky campaign finance law, provided such an expenditure is

made without any coordination, consultation, or cooperation with any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them, and which is not made in concert with, or at the request or suggestion of any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of them ...

KRS 121A.010(13) and KRS 121.015(12) (defining independent expenditure); KRS 121A.010(11)(b)4.; KRS 121A.030(3) (exempting independent expenditures from the expenditure limitations imposed on qualifying slates of candidates); see also Federal Election Commission v. The Christian Coalition, -- F. Supp. --, Civil Action No. 96-1781 (D.D.C. Aug. 2, 1999) (defining coordination).

Provided such expenditures are independent as defined above, they are unlimited. However, independent expenditures exceeding five hundred dollars (\$500) in the aggregate in any one election must be reported to the Registry. KRS 121.150(1). Federal courts have upheld statutes requiring the disclosure of payment for express advocacy

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communications, both as independent expenditures and direct campaign contributions. See, e.g., Buckley v. Valeo, 424 U.S. 1 (1976), Kentucky Right to Life v. Terry, 108 F.3rd 637 (6th Cir. 1997), cert. denied, 118 S. Ct. 162 (1997).²

- (5) **If printing and distributing such materials is a violation, what are the penalties to me or to the Gatewood Galbraith campaign?**

Provided the materials are printed and distributed in the manner described in the foregoing response, no penalties would result to the individual or committee that paid for the materials and their distribution or to the candidates whom the materials support.

- (6) **Are the current campaign laws, as they are related to Sections 1, 8, 15, and 26 of the Kentucky Constitution, to be considered void? If not, under what authority are these laws valid?**

Under the analysis set forth in Buckley, supra, Kentucky's campaign finance statutes relating to the facts pertaining to the transaction you describe, specifically concerning independent expenditures and disclosure, are consistent with the Kentucky and United States Constitutions.

This advisory opinion is based on the specific transaction presented in your letter. If you require any additional information, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

² "Using a strict scrutiny analysis, the Supreme Court permitted these restrictions upon plaintiffs' First Amendment rights because they were narrowly tailored to directly serve three substantial governmental interests: 1) notifying the public of the source of campaign funds; 2) preventing actual and perceived corruption in the political process; and 3) creating a recordkeeping method to detect violations of the Campaign Act's contribution limitations. Id. at 64-68. The Court balanced these interests against the free exercise of First Amendment rights and concluded that the reporting requirements were constitutional because they were narrowly tailored to further these interests." Terry, 108 F.3d at 647.